

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.778 OF 2019

SUSHILA W/O. RAMCHANDRA VEER
 VERSUS
 RANJANA W/O. MOHANRAO CHINTAMANI AND OTHERS

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 Advocate for Petitioner : Mr. Rahul D. Khadap
 APP for Respondent – State : Mrs. G.L. Deshpande
 Advocate for Respondents No.1 to 9 : Mr. Sartaj H. Pathan h/f.
 Mr. T.J. Momin

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CORAM : R. M. JOSHI, J.
DATE : JULY 26, 2023

PER COURT :

. This petition takes exception to the order dated 31.10.2018 passed by the Additional Sessions Judge, Beed in Criminal M.A. No. 37 of 2018 to the extent of dismissal of complaint as against accused nos.2 to 5, 7 and 9.

2. Petitioner filed private complaint being Criminal Application No. 37 of 2018 before the Additional Sessions Judge, under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act') stating that on 30.07.2017 at 10:00 a.m. respondents / accused no.1, 2, 6 and 7

assaulted complainant and threaten to kill her. It is also alleged that they abused and insulted her over her caste. After filing of complaint, report was called under Section 202 of Code of Criminal Procedure, 1973 (in short, 'CrPC'). Learned Additional Sessions Judge issued process against accused no.1, 6 and 8. The complaint was dismissed against accused nos.2 to 5, 7 and 9, by passing impugned order.

3. Learned counsel for petitioner states that learned Trial Court has failed to take into consideration the allegations in the First Information Report as well as the statements recorded by the police during the enquiry conducted under Section 202 of the Cr.PC. He drew attention of this Court to the statements of sons of informant wherein they have specifically stated about incident as well as about the fact that they being assaulted with fists and kick blows by accused nos. 2 to 5, 7 and 9.

4. Learned counsel for respondents opposed said contention by stating that the police has filed report to the effect that no offence is made out against these accused and hence there is no infirmity in the order impugned.

5. Perusal of the impugned order shows that learned Additional Sessions Judge has relied upon the report of the concerned police station rather than taking into account statements recorded of the witnesses therein. As rightly pointed out by learned counsel for petitioner that there are specific statements made by sons of complainant about they being beaten with fists and kick blows. Thus, *prima facie* offence under Section 323 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') is certainly made out against accused no.2 to 5, 7 and 9. In such circumstances, learned Additional Sessions Judge committed error in dismissing the entire complaint against accused no.2 to 5, 7 and 9. However, no fault can be found with order of learned Additional Sessions Judge in refusing and issuing process under the provisions of Atrocities Act. Hence, the following order.

ORDER

- (i) Criminal Writ Petition stands partly allowed.
- (ii) Impugned order dated 31.10.2018 passed by the learned Additional Sessions Judge, Beed in Criminal M.A. No. 37 of 2018 to the extent of the dismissal of complaint against accused no. 2 to 5, 7 and 9 is set aside to the extent of offence punishable under Section

323 of the Indian Penal Code.

(iii) Issue process against accused no. 2 to 5, 7 and 9 for offence punishable under Section 323 of the I.P.C.

[R. M. JOSHI]
JUDGE

GGP